

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DENISE ARB,

Plaintiff,

v.

Hon.
Case No.

**THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA,**

Defendant.

COMPLAINT

Plaintiff, DENISE ARB, through her attorneys, ILANA S. WILENKIN and FELDHEIM & WILENKIN, P.C., complains against the above-named Defendant as follows:

I. Jurisdiction and Venue

1) This Court's jurisdiction exists under the Employee Retirement Income Security Act of 1974 ("ERISA"), specifically, 29 U.S.C. §§ 1132(e)(1) and 1132(f), which provisions grant this Court the jurisdiction to hear civil actions to recover benefits due under the terms of an employee welfare benefit plan.

2) The Tyco Management Company, LLC Long-Term Disability Plan ("the Plan") consists of, *inter alia*, a long-term disability insurance plan, which Tyco Management Company, LLC sponsors, and which is underwritten and administered by Defendant The Prudential Insurance Company of America ("Prudential"), for the benefit of Tyco Management Company, LLC employees, including Plaintiff.

3) 29 U.S.C. § 1133 provides a mechanism for the administrative or internal appeal of benefit denials. Plaintiff ("Ms. Arb") has either exhausted all of her appeals or

has been denied access to a meaningful and/or full and fair pre-suit appellate review. This matter is ripe for juridical review.

4) Pursuant to 29 U.S.C. § 1132(e)(2) and 28 U.S.C. § 1391, venue is proper in the Eastern District of Michigan.

II. Nature of Action

5) This is a claim seeking disability income benefits pursuant to a long-term disability income benefit plan, which, upon information and belief, is underwritten and administered by Prudential and was intended to provide long-term disability income benefits to Tyco Management Company, LLC employees. This action is brought pursuant to § 502(a)(1)(B) of ERISA - 29 U.S.C. § 1132(a)(1)(B).

III. The Parties

6) Ms. Arb is 54 years-of-age and is a resident of Flint, Michigan.

7) The Plan constitutes an employee welfare benefit plan that Tyco Management Company, LLC sponsors for the benefit of its employees. Upon information and belief, Prudential underwrites and administers the Plan. Prudential is a foreign insurance company (NAIC Number 68241) authorized to engage in insurance-related business in Michigan and in the Eastern District of Michigan. Its resident agent for service of process is: The Corporation Company, 30600 Telegraph Road, Ste. 2345, Bingham Farms, MI 48025.

8) During all relevant times, the Plan constituted an "employee welfare benefit plan," as defined by 29 U.S.C. § 1002(1), and, incidental to her employment, Ms.

Arb received coverage under the Plan as a "participant," as defined by 29 U.S.C. § 1002(7). This claim relates to benefits due under the above-described Plan.

IV. Factual Statement

9) Mrs. Arb began working for Tyco Management Company, LLC on or about December 27, 2004 as an ADT Residential Sales Representative.

10) Mrs. Arb suffered from the following non-exhaustive conditions and has undergone the following treatments:

9/27/99

Dr. Sidney Martin removed a 8.5 x 4.3 cm tumor, pack bone lesion in left tibia, and placed drain(s).

10/25/99

Dr. Sidney Martin performed a complete anterior synovectomy and removal of pigmented villonodular synovitis tumor.

11/29/99

15 radiation sessions that were completed on or about 12/21/99.

4/18/03

Dr. Kimberly Les performed a synovectomy.

8/15/07

Dr. J. Martin performed a right rotator cuff repair, with permanent anchor and stitching.

6/10/08

Dr. B. Lawrence performed right rotator cuff repair.

2009

Left knee arthroscopic procedure.

Approximately August 2010

Total left knee replacement.

11) Subsequent to her August 2010 knee replacement, Ms. Arb attempted to return to work as an ADT Residential Sales Representative, but her left knee pain grew increasingly worse.

12) Mrs. Arb stopped working on or about January 19, 2012 due to left knee pain, complex regional pain syndrome, low back pain, bilateral shoulder pain, and left thigh pain.

13) As an insured employee under the Plan, Ms. Arb applied for and Prudential paid LTD benefits beginning July 14, 2012 through July 14, 2014.

14) Prudential denied Ms. Arb's claim on May 12, 2014, with benefits terminating on July 14, 2014.

15) Ms. Arb appealed Prudential's denial on October 24, 2014.

16) On December 11, 2014, Prudential reversed its decision and resumed paying Ms. Arb monthly disability benefits until December 31, 2015, at which time it again denied Ms. Arb's claim, arguing that she possessed the residual functional capacity to perform a gainful occupation, i.e., sedentary employment.

17) On June 21, 2016, Ms. Arb appealed Prudential's denial and presented the following evidence:

A. 6/21/16 & 7/6/16 Medical Evidence

18) On November 2, 2-15, Mrs. Arb treated with Dr. Perry for chronic left knee pain, who referred Mrs. Arb to pain management (Dr. Eldohiri) for evaluation and treatment.

19) Dr. Perry filled out disability paperwork for Mrs. Arb on January 15, 2016.

20) On May 9, 2016, Mrs. Arb saw Dr. Perry for ongoing left knee pain, for which Dr. Perry ordered an MRI.

21) A May 12, 2016 left knee MRI indicated: "Postsurgical changes related to total knee arthroplasty which limits evaluation. Small joint effusion present. Radiographic correlation recommended."

22) Dr. Eldohiri has diagnosed Ms. Arb with left knee/leg CRPS, right shoulder pain, spondylosis (left L3-S1), and low back and sacroiliac pain.

23) Dr. Eldohiri has administered the following treatments in connection with Ms. Arb's treatment:

12/30/14

L3-L4 bilateral lumbar facet block and left paravertebral sympathetic lumbar block (Ex. 2 of Administrative Appeal)

1/11/16

Left L3-S1 lumbar facet block, with lumbar sympathetic block *Id.*

1/20/16

Right shoulder injection *Id.*

1/28/16

Right shoulder injection *Id.*

3/17/16

Left L2-L4 sympathetic block *Id.*

4/12/16

Left L3-S1 lumbar facet block *Id.*

24) Mrs. Arb has received several blocks subsequent to that which Dr. Eldohiri administered on 4/12/16.

25) On July 6, 2016, Ms. Arb sent Prudential an updated record authored by her orthopaedic surgeon, Sidney N. Martin, M.D. In relevant part, Dr. Martin opined as follows:

She has a plethora of problems including chronic regional pain syndrome in her left leg. She has had a total knee replacement with a history of pigmented villonodular synovitis. She underwent a synovectomy and bone cement packing of an osteolytic lesion in her tibial plateau a number of years ago followed by radiation as I recall. She then subsequently developed arthritis in that knee and had to have the knee replaced.

She has also had problems associated with her shoulder and has had rotator-cuff surgery. She continues to have chronic right shoulder pain. She is currently under the care of the pain management specialist at the Insight Institute for Neurosurgery and Neurologic Services and they have recommended at the very least dorsal rhizotomies from what I understand and they are considering doing a spinal cord stimulator for her chronic regional pain syndrome in her left leg.

She complains of pain bitterly in her shoulder and her leg and her knee and back. She currently takes 60 mg of MS-Contin daily along with intermittent Norco for pain control. She now says that her pain is 9 out of 10. It is exacerbated by standing and sitting in one position for longer than about 10 or 15 minutes and walking for any long distance or squatting and climbing stairs.

* * *

I had a long talk with her today. I think the reason she was here was generated by her lawyer as she has her long-term disability hearing coming up. Apparently the pain management people will not give any kind of letter documenting her current condition and I think that is why she requested to see me today.

So, that is my opinion. I think that she suffers from chronic pain. She requires frequent changes of position. I am not really sure about a sedentary job because I do not know how she could actually get to and from work. She says her husband drives her most places now and she is very fearful of driving because she takes 60 mg of MS-Contin daily and she is also on Norco. She is being actively treated for complex regional pain syndrome. She has a history of low back pain and rotator-cuff

problems with chronic shoulder pain. She has pigmented villonodular synovitis of the knee with subsequent arthritis and now with a knee replacement.

So, I do not know if that is enough to qualify for long-term disability or not, but I certainly think that it would be very difficult to find any kind of job that could meet her needs from the standpoint of activity restrictions.

26) On August 10, 2016, Prudential denied Ms. Arb's claim/appeal.

27) Prudential's actions have now foreclosed all avenues of administrative appeal and this matter is ripe for judicial review.

28) Because valid, objective, and well-supported proofs establish Ms. Arb's ongoing disability within the Plan's terms, she is entitled to receive long-term disability benefits retroactive to the date they were wrongfully denied, approximately January 1, 2016.

WHEREFORE, based upon the preceding reasons, Plaintiff prays for the following relief:

- A) That this Court enter judgment in Ms. Arb's favor against Prudential and order the immediate payment of her disability income retroactive to the date they were terminated, January 1, 2016.
- B) That this Court order Prudential to pay Ms. Arb post-judgment interest on all benefits that have accrued prior to the date of judgment in accordance with M.C.L. § 600.6013 and 600.6455.
- C) That this Court order Prudential to continue paying Ms. Arb's benefits, provided she continues to meet the Plans' terms and conditions for the receipt of benefits.
- D) That this Court award attorneys' fees pursuant to 29 U.S.C. § 1132(g).

- E) That Ms. Arb recovers all relief to which she may be entitled, along with the costs of litigation.

Respectfully submitted:

FELDHEIM & WILENKIN, P.C.

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Date: August 18, 2016